

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:23-CV-00349

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|-----------------------------|---|--------------------------|
| RONALD JOHNSON, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | DEFENDANT |
| |) | ZELLINGER'S |
| TOWN OF SMITHFIELD, et al., |) | MOTION TO DISMISS |
| |) | |
| Defendants. |) | |
| _____ |) | |

Defendant, Benjamin O. Zellinger, by and through undersigned counsel, hereby moves to dismiss the claims brought against him pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff's Complaint fails to state a claim for relief against Zellinger:

1. Zellinger is entitled to prosecutorial immunity, which bars any claim brought against him in his individual or official capacity;
2. Zellinger is entitled to Eleventh Amendment immunity, which bars claims brought against him in his official capacity;
3. The *Younger* Doctrine applies, warranting dismissal of a federal suit initiated during the pendency of a state court criminal proceeding; and
4. Plaintiff's Complaint fails to adequately assert factual allegations to state any claim for relief against Zellinger.

In support of this motion, Zellinger relies on the arguments and authorities contained in the accompanying Memorandum of Law in Support of Defendant Zellinger's Motion to Dismiss.

Respectfully submitted this 28th day of August 2023.

JOSHUA H. STEIN
Attorney General

/s/ Laura H. McHenry
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Counsel for Defendant Zellinger

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the clerk of Court using the CM/ECF system, which will send notification of such to all counsel of record in this matter.

This 28th day of August 2023.

/s/ Laura H. McHenry

Laura H. McHenry

Special Deputy Attorney General